

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
441 4th Street, NW, Suite 540-S
Washington, DC 20001-2714

T.T.

Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
Respondent

Case No.: HS-P-06-101115

FINAL ORDER

I. Introduction

On June 30, 2006, Petitioner T.T. through counsel filed a hearing request in this matter, seeking review of a number of matters relating to his eligibility for Rehabilitation Services (“RSA”) benefits. The status conference was continued several times, as the parties attempted to settle their dispute. The parties reported that they were able to settle all issues except for Petitioner’s eligibility for RSA benefits for the Fall of 2005. The hearing was scheduled for September 20, 2006 on this remaining issue. Since Petitioner was attending school in Florida, his attendance at the hearing was waived.

The hearing was held as scheduled on September 20, 2006. Joseph R. Cooney, Esq., appeared on behalf of Petitioner. Christine Samonds, Esq., appeared on behalf of Respondent District of Columbia Department of Human Services. The parties presented their evidence on that date, and requested a briefing schedule to address the legal issues. Respondent filed its brief on September 27, 2006. Petitioner filed his brief on October 5, 2006.

Based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

III. Findings of Fact

Prior to June 2005, Petitioner was a minor student who lived in the District with his mother, Corinne Buell.¹ Petitioner had been identified as a child with an educational disability and he received special education services from the District of Columbia Public Schools (“DCPS”) through the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 *et seq.*

From at least 1998 through 2005, Petitioner attended a special education school in Springfield, Virginia, the George Washington Community Preparatory School (“GW”). Respondent’s Exhibit (“RX”) 205. DCPS funded this placement pursuant to Petitioner’s individualized education plan (“IEP”). Petitioner also received transportation services from DCPS. Petitioner’s Exhibit (“PX”) 109. Petitioner graduated high school in June 2005, and he became an adult that year.

In 1999, DCPS and five service providers, including the District of Columbia Department of Human Services – Rehabilitation Services Administration (also referred to as “RSA”), entered into a Memorandum of Agreement (“MOA”). PX 101; RX 210. The purpose for the MOA was to identify students with disabilities anticipated to exit DCPS within two years, and to provide those students with transition services into the adult community. The MOA designated DCPS as

¹ Petitioner’s mother stated that she has no preference whether to be called Ms. Buell or Ms. Takahashi. I will refer to her as Ms. Buell, as she has signed documents in this name.

the lead agency responsible for providing transition services to students with disabilities under an IEP. PX 101; RX 210, p. 3.²

Pages 6 and 7 of the MOA defined the role and obligations of Respondent and RSA, stating in pertinent part:

Department of Human Services

- Commission on Social Services, **Rehabilitation Services Administration**

The Rehabilitation Services Administration will:

- Assign rehabilitation counselors to each high school and the special education citywide schools to provide a point of contact for staff, youth and families.
- Provide technical assistance to the school staff, students (beginning at age 14), and families in the development of vocational and independent living goals in preparation for the successful movement from school to employment/independent living.
- Attend IEP meetings, when DCPS has provided the IEP meeting schedule as indicated above, to participate or provide input to the IEP committee at least two years prior to the student's anticipated school exit for those students expected to be eligible for vocational rehabilitation services.

At all times relevant to this case, Darlene Gripper has been the District's State Transition Program Coordinator and Supervisor of the Youth Transition Services Program ("YTSP") for RSA. Ms. Gripper is the contact person designated to receive information from DCPS as to

² The IDEA, 20 U.S.C. § 1414(d)(1)(A)(VIII), requires the local education agency (here, DCPS) to provide transition services to disabled children 16 years of age or older, after determining: (1) the child's appropriate measurable postsecondary goals including employment goals; and (2) services needed to assist the child in reaching those goals. Conversely, the RSA program includes the provision of transition services in furtherance of an IPE, under 29 U.S.C. § 723(a)(15). OAH does not have jurisdiction to hear special education due process hearings under the IDEA, and nothing in this Order prevents Petitioner from filing a hearing request to contest the actions of DCPS under the IDEA. I will only determine those issues that concern Respondent's actions under the RSA program.

disabled students who may be eligible for RSA services. The YTSP assigns counselors to every city-wide public high school, although the counselors are housed at the RSA main office. The YTSP conducts educational programs for public and private schools, and other interested parties, when requested or when YTSP deems it to be appropriate. The YTSP retains a database of commonly-used private schools that regularly provide services to DCPS students with disabilities. GW is not listed on this database. The YTSP does not make eligibility determinations. Instead, it refers applicants to the Client Services Division of RSA.

Since RSA does not operate the public or private schools in the District, it relies on referrals from DCPS and other interested parties or persons, to identify students with disabilities who may qualify for the RSA program. Once a referral is received, RSA representatives attend IEP meetings, if invited by DCPS, and assess the students for RSA eligibility. RSA gives an orientation program to these students while they are in school, and it processes applications for RSA services after the students exit from DCPS.

In this case, DCPS never identified Petitioner as a student who might qualify for RSA benefits. DCPS never provided information about RSA to Petitioner or Ms. Buell. DCPS never referred Petitioner to RSA, and DCPS never invited RSA to participate in Petitioner's IEP meetings. RSA was not aware of GW as a special education school providing services to DCPS students, and RSA had no information about Petitioner prior to August 22, 2005.

At the same time, RSA did not have any procedure in place to identify students entitled to transition services, other than the procedures outlined in the MOA with DCPS. RSA provided regular staff assistance only to public high schools in the District.

In approximately June 2005, Ms. Buell applied for Petitioner to attend college at Beacon College in Florida. At that time, neither Ms. Buell nor Petitioner had ever heard of the RSA program. That summer, she was researching public assistance programs that might help Petitioner and she learned of RSA. Consequently, she applied on Petitioner's behalf for RSA benefits on August 22, 2005. RX 200. At that time, Petitioner had been accepted to Beacon College and was scheduled to begin his first semester in one week.

RSA receives 80% of its funds from the federal government and 20% from the District Government, and it seeks to comply with fiscal restraints imposed by the federal RSA program and by the District's Anti-Deficiency Act. RSA has determined that it is obligated to assess an applicant's disability and vocational goals and to develop an Individualized Plan for Employment ("IPE") before it may expend RSA funds for vocational services. RSA's federal auditors monitor RSA's records to assure that federal funds are not spent inappropriately.

When RSA received Petitioner's application, it scheduled a two-day orientation session for Petitioner to learn about the RSA program. Petitioner and Ms. Buell attended this orientation on September 12 and 13, 2005.³ RX 201. RSA then assigned Myra Lewis to be Petitioner's vocational counselor.

On October 11, 2005, Ms. Lewis met with Petitioner and Ms. Buell. Petitioner signed and received a copy of his Client Rights and Responsibilities form. RX 202. Ms. Buell provided to Ms. Lewis copies of a psychological evaluation and other items documenting Petitioner's disabilities. Petitioner has been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"), Learning Disability ("LD"), and Asperger's Syndrome. RX 203 and 205.

³ Petitioner traveled from Florida to attend his meetings with RSA representatives.

Petitioner's vocational goal was identified as Architecture. Ms. Lewis informed Petitioner and Ms. Buell of two potential problems: (1) RSA may not cover services for which Petitioner contracted before he filed his application for RSA benefits; and (2) Petitioner may have to justify why he needs the services of an educational program in Florida, rather than the University of the District of Columbia ("UDC") or another local school. Ms. Lewis stated that she did not see a problem with eligibility, but she did not issue an eligibility determination at that time.

On October 16, 2005, Ms. Buell sent a letter to Ms. Lewis outlining Petitioner's vocational goals and needs, and justifying his need for Beacon College. RX 205. Ms. Buell stated that this was the only accredited college in the United States exclusively for students with learning disabilities, and it has extensive experience teaching students who suffer from Asperger's Syndrome.

RSA referred Petitioner for a medical and psychiatric consultation. On November 8, 2005, Dr. Nancy Clark evaluated Petitioner and concluded in her report that he is appropriate for his vocational goals. RX 206.

RSA did not immediately grant services to Petitioner. Ultimately, RSA did formulate an IPE authorizing payments for Petitioner to attend Beacon College beginning in the Spring of 2006. PX 100.⁴ RSA did not agree to reimburse Petitioner for his educational costs for the Fall of 2005. RSA denied the request because RSA would not pay for debts incurred before the date of application and before the date of the signing of the IPE. There is no written notice of action in the record.

⁴ When Petitioner filed his hearing request, Beacon College was refusing to register Petitioner for the Fall of 2006 because Beacon had not been paid for the Spring 2006 semester. Before the hearing date, RSA made this payment to Beacon, and Petitioner was allowed to attend school for the Fall of 2006.

IV. Conclusions of Law

Prior to June 2005, Petitioner was a student with a disability who attended high school under an IEP developed with DCPS. Through the IEP, DCPS funded Petitioner's placement at GW, a private school in Virginia. Beginning at age 16, and continuing through the last two years of his high school term, Petitioner was entitled to receive transition services from DCPS through the IDEA, including referrals to vocational rehabilitation if appropriate. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

Unfortunately, Petitioner was not identified as a candidate for RSA services until August 2005, after he had graduated high school. It was only through his mother's initiative that he was able to access the RSA program at all. Petitioner applied for RSA benefits after he had enrolled in Beacon College on his own (through his mother's efforts).

Therefore, this case presents the following general question: Is the RSA program liable for vocational services for which Petitioner obligated himself: (a) before he applied for RSA benefits; but also (b) after Petitioner had been denied transition services to include eligibility determination for vocational benefits? The general question requires the resolution of two sub-issues: First, is the RSA program obligated (and if so, to what extent is it obligated) to identify a minor disabled student as a candidate for RSA benefits while he is receiving special education benefits? Second, assuming the answer to the first sub-issue is no, is the RSA program required to fund an educational program that the applicant has already committed himself to, but he has not yet entered the program as of the date of application?

For the following reasons, I conclude that the RSA program is not obligated to provide vocational benefits contracted for prior to application. If Petitioner has a valid cause of action, it is against DCPS but not against Respondent. I will address the sub-issues separately.

A. RSA's Obligations Regarding Transition Services

The purpose for the RSA program is to provide vocational rehabilitation services to eligible *adult* individuals with disabilities, and the District DHS RSA implements this program on behalf of the District of Columbia. *See* 34 C.F.R. § 361.57(b)(2); 29 DCMR 100; and 29 DCMR Chapter 1 *generally*. The matter in dispute is whether Respondent complied with its obligations, if any, to identify Petitioner as a student with a disability who may be eligible for RSA benefits when he reached majority.

For purposes of rehabilitation services, the term “transition services” is defined as “a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including ... vocational training, ... based upon the individual student’s needs[.]” 29 U.S.C. § 705(a)(37). As stated above, the term “transition services” is also a defined educational service under the IDEA.

Respondent claims initially it has no obligations with regard to the minor students. This is not correct. There are two provisions in Title 29 of the U.S. Code that bear on Respondent’s obligations with regard to provision of “transition services.”

29 U.S.C. § 721(a)(11)(D) provides:

(D) *Coordination with education officials.* The State plan [*for rehabilitation services*] shall contain plans, policies, and procedures for coordination between the designated State agency and education officials

responsible for the public education of students with disabilities, that are designed to facilitate the transition of the students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitative services under this title [29 U.S.C. §§ 720 *et seq.*], including information on a formal interagency agreement with the State educational agency that, at a minimum, provides for –

(i) consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(ii) transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs under section 614(d) of the Individuals with Disabilities Education Act [20 U.S.C. § 1414(d)];

(iii) the roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and

(iv) procedures for outreach to and identification of students with disabilities who need the transition services.

[parenthetical matters in italics added].

In addition, federal law requires the RSA program to provide, among other things, “transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment[.]” 29 U.S.C. § 723(a)(15). This latter statute by its plain language does not create any obligation on Respondent to provide any services to a person who is not under an IPE. Thus, the requirements of § 721 as to state plans in general are pertinent here.

Respondent contends that, if it has an obligation to locate children with disabilities who may be eligible for RSA services, Respondent met this obligation by developing the MOA with DCPS and other agencies, and relying upon DCPS and others to provide referrals. Petitioner

counters that the MOA is procedurally deficient under federal mandates and that Respondent has failed to meet even its obligations under the MOA.

The MOA established DCPS as the lead agency charged with identifying students with disabilities who may be entitled to transition services, including vocational rehabilitation services. This designation is entirely appropriate because DCPS has the obligation under the IDEA to provide transition services to such students. This is part of DCPS' duty to provide a free, appropriate public education to the disabled students. *See, generally, Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). In addition, DCPS administers the educational programs the students attend, and DCPS has access to the confidential educational records of the students. DCPS is charged with the responsibility each year to formulate an IEP for the student with a disability, while the student attends public school (or is placed in a private school pursuant to the IEP).

Pages 6 and 7 contain Respondent's obligations with regard to these students. Respondent is required to: (1) assign rehabilitation counselors to the "city-wide" high schools, both public and private; (2) provide education and technical assistance to staff, students and families; and (3) attend IEP meetings when invited to do so by DCPS. These obligations are consistent with the requirements for the State Plan (for coordination with education officials), under 29 U.S.C. § 721(a)(11)(D). In other words, the MOA's provisions with regard to Respondent cover all of the duties imposed by the federal statute on the local vocational services program.

Petitioner contends that Respondent has no procedures in place for identifying students who may be eligible for vocational benefits. However, the MOA adequately addresses the

obligations of Respondent to coordinate with educational officials to identify students with disabilities who may qualify for vocational services, and there is nothing improper about designating the local educational agency as the lead agency. Petitioner has cited no authority that places any further obligation upon Respondent with regard to a minor student.

For these reasons, I conclude that the MOA itself is procedurally adequate to encompass RSA's responsibilities with regard to the disabled students. If RSA performs its duties under the MOA, I conclude that RSA has no further liability for the failure to identify a particular student who may qualify for RSA benefits after the age of majority.

Next, Petitioner argues that Respondent improperly failed to advise Petitioner of the RSA program purposes, requirements, procedures, and scope of services. However, I agree with Respondent's position that any such duty is contingent on Respondent receiving from DCPS identification of the disabled student. Respondent is obligated to coordinate transition planning with educational officials, but the primary obligation to identify the students and refer them to appropriate adult agencies rests with DCPS. Conversely, § 723(a)(15) of the Rehabilitation Services Act only obligates Respondent to provide transition services in accordance with an IPE. There was a failure to identify Petitioner as a disabled student who might become eligible for RSA benefits, but Respondent is not the agency responsible for that failure.

Petitioner then criticizes RSA for failing to appropriately reach out to the disabled students as required in the MOA. As he notes, Ms. Gripper testified that RSA only provided counselors to *public* high schools in the District, and not to private high schools attended by DCPS students, located within or outside the District. However, there are two problems with Petitioner's approach. First, Petitioner overlooks other outreach activities performed by

Respondent. Respondent maintained a list of private schools that DCPS regularly uses for placement of students with disabilities. The school that Petitioner attended was not one of the private schools regularly used by DCPS and it is not located within the city.

Second, Petitioner would require RSA, and not DCPS, to identify and provide counseling to all DCPS special education students, regardless of where they are educated. Thus, Petitioner places a burden on Respondent that was not contemplated in the MOA or in the federal statute (§ 721). DCPS places disabled students in numerous private schools, some located far from the District. The MOA only required Respondent to provide counselors to “city-wide” schools. I agree with Petitioner that his transition needs were neglected, but Respondent was not the agency responsible for this neglect. DCPS must assume primary responsibility for the neglect. Since Respondent has met its obligations under § 721, and it has no obligation to provide transition services to students who are not under an IPE, I do not agree with Petitioner that Respondent is trying to shift responsibility onto others.⁵

B. RSA’s Obligation to Fund Services Already Under Contract

The second sub-issue is whether Respondent was required to fund the educational program for which Petitioner had already applied and been accepted. Under 29 U.S.C. § 722(a)(6), RSA is required to determine an individual’s eligibility for RSA benefits within 60 days after the individual has submitted an application. Then the agency must develop, with the individual’s informed choice, a written IPE setting forth the employment outcome, services, provider, and methods used to procure the services. 29 U.S.C. §§ 722(b)(1) and (b)(2).

⁵ I do not reach the question whether Respondent is required under the MOA to provide counselors to private special education schools located in the District. That situation is not presented here.

29 DCMR 101 includes the following process for referrals and applications: (1) an individual may apply directly or by referral from another source; (2) RSA then schedules an orientation meeting to explain the process; (3) the individual may provide medical, social and vocational information to assist in the determination, and RSA provides technical assistance to the individual; and (4) after orientation, RSA then schedules an interview with a counselor, although this meeting can be waived by RSA. RSA may schedule evaluations as appropriate to determine eligibility. 29 DCMR 103. After eligibility is determined, RSA meets with the individual to develop an IPE. 29 DCMR 105.

Respondent argues that it may not grant RSA benefits that the applicant contracted for prior to application. Further, Respondent contends that it is entitled to complete the application, assessment, eligibility determination, and IPE development processes, before Respondent is obligated to fund any particular service. I agree.

Even though Petitioner had not entered Beacon College when his mother referred him to RSA, Petitioner had already obligated himself to attend Beacon and to pay tuition for the Fall 2005 semester. Respondent played no role in that college application and never contracted with Petitioner or the school to fund this tuition. Respondent had no obligation to pay for Petitioner's tuition until it had determined his eligibility and developed an IPE, a contract for his vocational program. Respondent is correct that it is the development of the IPE that creates the duties of the agency to fund vocational services. This determination is consistent with the language of 29 U.S.C. § 723(a)(15), stating that RSA's obligation to provide transition services is contingent on the provisions of the IPE.

For all of these reasons, I conclude that Respondent acted lawfully by denying RSA benefits for Petitioner's tuition and other costs during the Fall 2005 semester.

V. Order

Therefore, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the arguments of the parties, and the entire record of this case, it is hereby, this _____ day of _____, 2006:

ORDERED, that Respondent District of Columbia Department of Human Services' denial of Petitioner T.T.'s request for Beacon College tuition reimbursement and other costs for the Fall 2005 semester, under the RSA program, is **UPHELD**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this decision are stated below.

October 12, 2006

/s/

Paul B. Handy
Administrative Law Judge